IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF:

INVENTOR(S):	Gutierrez, et al
APPL. NUMBER:	09/852,831
FILED:	5/10/2001
TITLE:	Reserve Price Auctioning

GROUP ART UNIT:	3627
EXAMINER:	James A. Kramer

Docket Number: AUS920010325US1

Honorable Commissioner For Patents
PO Box 1450
Alexandria, Virginia 22313-1450

TRANSMITTAL OF APPEAL BRIEF

Enclosed herewith is an Appeal Brief, in triplicate, for the above-identified application submitted in response to the Notice of Non-Compliance With 37 CFR 1.192(c) which was mailed 10/19/2004. The "Grouping" paragraph has been modified to indicate that all of claims 1-26 "stand or fall together" as requested by the referenced Notice.

Respectfully submitted,

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Attorney Docket No. AUS920010325US1

IN RE APPLICATION OF: §
                                   §
Gutierrez, et al   §   Examiner: **James A. Kramer**
                                   §
Serial Number: 09/852,831   §   Art Unit: **3627**
                                   §
Filed: **May 10, 2001**   §
                                   §
For: **RESERVE PRICE AUCTIONING** §
                                   §
                                   §
                                   §

<u>**APPEAL BRIEF**</u>

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

This Brief is submitted in triplicate in support of the Appeal in the above-identified application.

<table>
<tr><td colspan="2" align="center">CERTIFICATE OF MAILING
37 CFR 1.8(a)</td></tr>
<tr><td colspan="2">I hereby certify that this correspondence is being deposited with the United States Postal Service as First-Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on the date below:</td></tr>
<tr><td align="center"><u>26 October 2004</u>
Date</td><td align="center"><u>(signature)</u>
Signature</td></tr>
</table>

APPEAL BRIEF
PAGE 1 OF 16

44

45 ## TABLE OF CONTENTS

46

73

74 ## REAL PARTY IN INTEREST

75

76 The present application is assigned to International Business

77 Machines Corporation, the real party in interest.

78

79

80 ## RELATED APPEALS AND INTERFERENCES

81

82 No related appeal is presently pending.

83

84

85 ## STATUS OF THE CLAIMS

86

87 Claims 1-26 are pending and stand finally rejected by the

88 Examiner as noted in the Final Office Action mailed March 5,

89 2004.

90

91

92 ## STATUS OF AMENDMENTS

93

94 Prior to the Final Office Action (mailed 3/5/04), there was only

95 one Office Action mailed 9/24/03 and one Amendment mailed

96 12/22/03. The Second and Final Office Action rejected all 26

97 claims under 35 USC 103 over a single reference. The last entered

98 amendment was submitted 12/22/03 which amended the claims to the

99 text shown in the Appendix.

100

101

SUMMARY OF THE INVENTION

103

104 The present application discloses a method and implementing

105 system in which items are offered for auction sale at a network

106 site to bidders who access the auction site (e.g., *inter alia,*

107 page 4, lines 1-5). A seller is enabled to designate a reserve

108 price (e.g., *inter alia,* page 5, line 30 et seq.) as well as a

109 number of automatic auction extensions (e.g., *inter alia,* page 6,

110 line 4 et seq.) to an initial auction period. If the designated

111 reserve price for an item is not met during the initial auction

112 period (e.g., *inter alia,* Fig. 4, #411), and the seller has

113 authorized a designated number of auction extensions (e.g., *inter*

114 *alia,* Fig. 4, #417, 419), the auction is automatically continued

115 beyond the initial auction period and is automatically extended

116 for the designated number of extensions (e.g., *inter alia,* page

117 7, line 7 et seq.) until either a bid for the reserve price is

118 received or the number of authorized extensions has transpired

119 (e.g., *inter alia,* Fig. 4, #419, 415).

120

121 The above methodology is set forth in pending claim 1, which

122 recites:

123

124 "1. A method for conducting an auction at an auction server for an item offered for sale, said

125 method comprising:

126

127 enabling a seller to designate a predetermined reserve price for said item;

128

129 enabling bidders to be connected to said auction server through an interconnection network;

130

131   receiving price bids from said bidders for said item during an auction period;

132

133   determining that none of said price bids is equal to or greater than said predetermined reserve

134   price during said auction period;

135

136   determining that an extension of said auction period was authorized by a seller of said item if none

137   of said price bids was equal to or greater than said predetermined reserve price; and

138

139   automatically extending said auction period if said extension of said auction period was

140   authorized."

141
142

143   **ISSUES**

144

145   1. Is the Examiner's rejection of claims 1-26 under 35 USC 103(a)

146   as being unpatentable over Alaia et al, U. S. Patent 6,230,147 B1

147   (hereinafter referred to as "Alaia"), well founded?

148

149

150   **GROUPING OF THE CLAIMS**

151

152   For purposes of this Appeal, claims 1-26 stand or fall together.

153

154

155   **ARGUMENT**

156

157   I. With regard to the rejection of claims 1-26 under 35 USC

158   103(a) over Alaia et al, it is respectfully submitted that there

159 is no basis, disclosure, teaching or even suggestion in Alaia
160 sufficient to render the present invention (as presented in
161 currently pending claims 1-26) obvious. It is further submitted
162 that Alaia not only does not teach or suggest the total
163 combination of elements and relationships as presently set forth
164 in the appended claims, but in fact Alaia actually teaches away
165 from the present invention as currently defined by the claims
166 presented in the Appendix.
167
168 The Alaia reference describes a "buyer" offered auction not a
169 "seller" offered auction. The dynamics of each type of auction
170 are totally different with different operational characteristics,
171 goals and results. The claims of the present application are all
172 directed to a seller auction as specifically stated in the
173 claims.
174

175 Alaia specifically states in the Abstract that "the bidding
176 status of a lot can be set to a 'pending' status after the
177 nominal closing time for submission of bids to allow bidders to
178 alert the auction coordinator of technical problems in submission
179 of bids". It is significant to note that **there is necessarily a**
180 **break in the Alaia buyer-auction** process. **In the present**
181 **invention, if a predetermined reserve price is not met then an**
182 **extension is implemented automatically.** A break in the auction
183 bidding, as suggested by Alaia, would not solve the problem
184 addressed by the applicant of enabling an **uninterrupted** continued
185 **bidding for an item (not an offer to sell a lot as required in**
186 **the Alaia buyer's auction) in order to obtain a bid equal to or**
187 **greater than a predetermined reserve price bid (not in order to**
188 **synchronize separate and different auction times among several**

189 auctions as is taught by Alaia). With the present invention, bids
190 are evaluated compared to the predetermined reserve price number
191 whereas in Alaia, bids are evaluated against a current best bid -
192 there is no mention or even suggestion of anything that might
193 even arguably correspond to a predetermined reserve price as that
194 term is disclosed and claimed in the present application. This
195 distinction is critical because it shows that the two auction
196 systems are quite different and the operational aspects of one
197 system (a buyer system) cannot be substituted for those of
198 another system (a seller system) without a total breakdown of the
199 flow of the seller auction system. That being the case, it is
200 submitted that pieces and parts of a buyer auction system cannot
201 be substituted for, or suggestive of, other pieces and parts of a
202 seller-oriented auction since such a substitution would render
203 the seller auction system inoperable for its intended purpose. A
204 direct substitution of the Alaia bidding extension process would,
205 by definition, depend only on the "current" or "then low" bidding
206 compared to other received bids and would have absolutely no use
207 for a predetermined reserve price designation for initiating an
208 extended bid period, and thus cannot be used to render the
209 claimed extension processing (which includes a "predetermined
210 reserve price" designator) obvious. There is no teaching or
211 suggestion in Alaia that even contemplates the currently claimed
212 combination of elements and relationships including:
213
214 "enabling a seller to designate a predetermined reserve price for said item; ...
215
216 determining that none of said price bids is equal to or greater than said predetermined
217 reserve price during said auction period;
218

219 **determining that an extension of said auction period was authorized by a seller of said item**
220 **if none of said price bids was equal to or greater than said predetermined reserve price;**
221 **and**
222
223 **automatically extending said auction period if said extension of said auction period was**
224 **authorized."**
225
226 It is also significant to note that a substitution of the Alaia
227 methodology in the applicant's system would render applicant's
228 system inoperable for its stated intended purpose since there
229 **would necessarily be a break in the bidding process, a result**
230 **intentionally avoided by the applicant's methodology.** Further, a
231 substitution of the applicant's methodology in the Alaia system
232 would render the Alaia system inoperable for its stated intended
233 purpose since a break to a "pending" status between conflicting
234 auction closing times could not achieved. In view of this direct
235 conflict, it is submitted that there can not possibly be a
236 suggestion in Alaia that could render the present invention
237 obvious. **Since a substitution of the Alaia methodology into the**
238 **applicant's system would render the applicant's system inoperable**
239 **for its intended purpose, it is a necessary corollary that Alaia**
240 **cannot be said to render the present invention obvious.**
241
242 It is therefore submitted that claims 1-26 are allowable under 35
243 USC 103(a) over Alaia et al.
244
245
246

248

249   For the reasons stated above, applicant urges the Board to
250   consider that Alaia et al does not even suggest a method or
251   system for conducting an auction at an auction server for an item
252   offered for sale, in which the method comprises enabling a seller
253   to designate a predetermined reserve price for an item, enabling
254   bidders to be connected to said auction server through an
255   interconnection network, receiving price bids from said bidders
256   for said item during an auction period, determining that none of
257   the price bids is equal to or greater than the predetermined
258   reserve price during the auction period, determining that an
259   extension of the auction period was authorized by a seller of the
260   item if none of the price bids was equal to or greater than the
261   predetermined reserve price, and automatically extending the
262   auction period if the extension of the auction period was
263   authorized, as those functions and relationships are set forth in
264   the pending claims 1-26.

265
266   Consequently, applicant urges that the rejection of claims 1-26
267   under 35 USC 103(a) as being unpatentable over Alaia et al, is
268   not well-founded and should be reversed.

269

270   Please charge IBM Corporation Deposit Account No. 09-0447 in the
271   amount of $330.00 for submission of a Brief in Support of Appeal.
272   No additional fee or extension of time is believed to be
273   required; however, in the event an additional fee or extension of
274   time is required, please charge the fee, as well as any other fee
275   necessary to further the prosecution of this application, to the

276 above-identified deposit account.

277 Respectfully submitted,

278

279

280

281

282 _____

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284 Registration No. 26,352
285 Attorney at Law
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287 Round Rock, Texas 78681
288
289 ATTORNEY FOR APPLICANT

APPENDIX

292 1. A method for conducting an auction at an auction server for an

293 item offered for sale, said method comprising:

294

295 enabling a seller to designate a predetermined reserve price for

296 said item;

297

298 enabling bidders to be connected to said auction server through

299 an interconnection network;

300

301 receiving price bids from said bidders for said item during an

302 auction period;

303

304 determining that none of said price bids is equal to or greater

305 than said predetermined reserve price during said auction period;

306

307 determining that an extension of said auction period was

308 authorized by a seller of said item if none of said price bids

309 was equal to or greater than said predetermined reserve price;

310 and

311

312 automatically extending said auction period if said extension of

313 said auction period was authorized.

314

315 2. The method as set forth in claim 1 and further including

316 enabling said seller to input said predetermined reserve price

317 through an input screen at a seller terminal.

318

319

320 3. The method as set forth in claim 2 wherein said

321 interconnection network is an Internet interconnection network.

322

323 4. The method as set forth in claim 1 and further including:

324

325 enabling said seller to input said predetermined reserve price

326 prior to said auction.

327

328 5. The method as set forth in claim 4 wherein said predetermined

329 reserve price is input by said seller using a computer device.

330

331 6. The method as set forth in claim 4 wherein said predetermined

332 reserve price is input by said seller using a wireless device.

333

334 7. The method as set forth in claim 4 wherein at least one of

335 said price bids is input by a bidder using a computer device.

336

337 8. The method as set forth in claim 4 wherein at least one of

338 said price bids is input by a bidder using a portable device.

339

340 9. The method as set forth in claim 4 wherein at least one of

341 said price bids is input by a bidder using a wireless device.

342

343 10. The method as set forth in claim 4 wherein at least one of

344 said price bids is input by a bidder using a wireless phone

345 device.

346

347 11. The method as set forth in claim 1 and further including:

348

349 enabling said seller to designate a duration for said extension.

350

351 12. The method as set forth in claim 11 and further including:

352

353 enabling said seller to designate a number of extensions to be

354 automatically executed so long as none of said price bids equaled

355 or exceeded said predetermined reserve price.

356

357 13. The method as set forth in claim 1 and further including

358 notifying said bidders of said extension.

359

360 14. A storage medium including machine readable coded indicia,

361 said storage medium being selectively coupled to a reading

362 device, said reading device being selectively coupled to

363 processing circuitry within a computer system, said reading

364 device being selectively operable to read said machine readable

365 coded indicia and provide program signals representative thereof,

366 said program signals being effective to enable an auction of an

367 item offered for sale, said program signals being selectively

368 operable for:

369

370 enabling a seller of said item to input a predetermined reserve

371 price for said item;

372

373 receiving price bids from bidders for said item during an auction

374 period;

375
376 determining that none of said price bids is equal to or greater
377 than said predetermined reserve price;
378
379 determining that an extension of said auction period was
380 authorized by said seller of said item if none of said price bids
381 was equal to or greater than said predetermined reserve price;
382 and
383
384 automatically extending said auction period if said extension of
385 said auction period was authorized.
386
387 15. The medium as set forth in claim 14 and further including
388 enabling said seller to input said predetermined reserve price
389 from a user terminal separate from said auction server.
390
391 16. The medium as set forth in claim 15 wherein said
392 interconnection network is an Internet interconnection network.
393
394 17. The medium as set forth in claim 14 wherein said program
395 signals are further effective for:
396
397 enabling said seller to input said predetermined reserve price
398 prior to said auction.
399
400 18. The medium as set forth in claim 17 wherein said
401 predetermined reserve price is input by said seller using a
402 computer device.

403 19. The medium as set forth in claim 17 wherein said
404 predetermined reserve price is input by said seller using a
405 wireless device.
406
407 20. The medium as set forth in claim 17 wherein at least one of
408 said price bids is input by a bidder using a computer device.
409
410 21. The medium as set forth in claim 17 wherein at least one of
411 said price bids is input by a bidder using a portable device.
412
413 22. The medium as set forth in claim 17 wherein at least one of
414 said price bids is input by a bidder using a wireless device.
415
416 23. The medium as set forth in claim 17 wherein at least one of
417 said price bids is input by a bidder using a wireless phone
418 device.
419
420 24. The medium as set forth in claim 14 wherein said program
421 signals are further effective for:
422
423 enabling said seller to designate a duration for said extension.
424
425 25. The medium as set forth in claim 24 wherein said program
426 signals are further effective for:
427
428 enabling said seller to designate a number of extensions to be
429 automatically executed so long as none of said price bids equaled
430 or exceeded said predetermined reserve price.

431

432   26. A computer system comprising:

433

434   a system bus;

435

436   a CPU device connected to said system bus;

437

438   a memory device connected to said system bus; and

439

440   connection means arranged to connect said computer system to a
441   network, said computer system being arranged to conduct an
442   auction of an item offered for sale over said network, said
443   computer system further including input means by which said
444   seller is enabled to input a predetermined reserve price for said
445   item, and a predetermined number of extension periods for said
446   auction, said computer system being selectively operable for
447   receiving price bids from bidders for said item during an auction
448   period and upon determining that none of said price bids is equal
449   to or greater than said predetermined reserve price, to
450   automatically extend said auction period for up to said
451   predetermined number of extension periods so long as none of said
452   price bids is equal to or greater than said predetermined reserve
453   price.